

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

)
Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Lancaster, Pickerington, and Westerville, Ohio)¹

)
MB Docket No. 03-238
RM-10820

)
File No. BPH-20040108ALM

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 15, 2006

Released: February 17, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a *Notice of Proposed Rule Making* issued at the request of Franklin Communications Inc.,² licensee of Station WJZA(FM), Lancaster, Ohio ("Petitioner"). Petitioner proposes the reallocation of Channel 278A from Lancaster, Ohio, to Pickerington, Ohio, as the community's first local aural transmission service, and the modification of the license for Station WJZA(FM) to reflect the this community of license change. During the comment period, North American Broadcasting Co., Inc. ("NABC"), licensee of Station WTDA(FM) (formerly WEGE(FM)), Westerville, Ohio, filed an application for construction permit for a minor change in the licensed facilities for Station WTDA(FM).³ According to Commission policy, this application is considered a counterproposal in this matter.⁴ Petitioner filed comments, reply comments, and other responsive pleadings. NABC filed reply comments, and two sets of further comments.

2. Petitioner filed this proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission's rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.⁵ In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.⁶

¹ Westerville, Ohio has been added to the caption.

² The rulemaking petition was filed by Skyway Broadcasting, Inc. former license of Station WJZA(FM). Subsequently, Franklin Communications, Inc. acquired the Station WJZA(FM) license, and is now the Petitioner in this matter. See File No. BALH-20050528AHI.

³ See File No. BPH- 20040108ALM.

⁴ See *Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments*, 7 FCC Rcd 4912 (1992), *recon. granted in part and denied in part*, 8 FCC Rcd 4743 (1993).

⁵ See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

⁶ See *Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88, 91 (1988). The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)].

3. Petitioner urges the Commission to dismiss the NABC application as defective because it conflicts with its proposal and with the licensed transmitter site for Station WPAY-FM, Portsmouth, Ohio. NABC acknowledges that its minor change application for Station WTDA(FM) would be short spaced to the Station WJZA(FM) Pickerington rulemaking proposal and suggests an alternate site for the Pickerington allotment so that both proposals can be accommodated. NABC also acknowledges its conflict with the license site for Station WPAY-FM, but argues that it has requested a waiver of Sections 73.207 and 73.3517 of the rules in its application. NABC recognizes that its application is contingent on Station WPAY(FM)'s reclassification as a Class C0 which would occur only if Station WPAY fails to complete its construction as a full Class C at a new site in accordance with its outstanding construction permit.⁷

4. We are dismissing the NABC application. In 2001, NABC filed a similar application⁸ proposing a site change which also required the reclassification of Station WPAY to Class C0. That application triggered the filing of an application by Station WPAY specifying minimum Class C facilities.⁹ The application was granted on September 26, 2003. As a result, the NABC application was dismissed under Note 4 of Section 73.3573 of the rules. NABC filed a Petition for Reconsideration directed to the dismissal of its application and the application thus remains pending.¹⁰ Under Section 73.3518 of the rules, we cannot consider the subsequent inconsistent and conflicting NABC application in this proceeding until final disposition of the NABC Petition for Reconsideration. Waiving this rule in these circumstances would not be conducive to the efficient processing of applications. Moreover, we see no public interest in separately processing inconsistent and repetitious applications filed by a single party.

5. We grant the reallocation of Channel 278A from Lancaster, Ohio, to Pickerington, Ohio, as the community's first local aural transmission service, and the modification of the license for Station WJZA(FM) to reflect the changes. We find that this reallocation will serve the public interest. It will result in a preferential arrangement of allotments, and meets the requirements for reallocation set forth in *Change of Community R&O*. First, the allotment of Channel 278A at Pickerington is mutually exclusive with the current use of Channel 278C at Lancaster. Second, the community of Lancaster would not be deprived of its only local service.¹¹ Third, the proposal would provide a first local aural transmission service (Priority 3) at Pickerington, population 9,792 persons (2000 U.S. Census), which is preferred over will result in a preferential arrangement of allotments over the retention of a fourth local transmission service (Priority 4) at Lancaster, population 35,335 persons (2000 U.S. Census). In addition, the current operation serves 441,943 persons, and the proposed operation will serve 768,993 persons for a net gain of 327,050 persons.

6. Pickerington is an independent community within the Columbus, Ohio Urbanized Area.¹² Pickerington was founded in 1815, incorporated as a community in 1991, and is listed as a city in the U.S. Census. It meets a majority of the eight factors which establish its independence from the larger central city of Columbus.¹³ There are numerous businesses which provide abundant opportunities for

⁷ File No. BPH-20021023ABC.

⁸ File No. BPH-20011221AAQ.

⁹ File No. BPH-20021023ABC.

¹⁰ See *Premier Broadcasting, Inc.*, 7 FCC Rcd 867 (1992).

¹¹ Stations WFCO(FM), WHOK(FM), and WLOH(AM) will remain in Lancaster.

¹² Petitioner originally claimed that Pickerington was not part of the Columbus Urbanized Area, but the 2000 Census includes it. However, it supplied ample evidence that Pickerington is independent and no parties challenged this claim.

¹³ The Commission considers the following factors in determining a community's interdependence with a central city: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified (continued....)

employment, but no statistics are provided on the extent community residents work in the community (Factor 1). There are two weekly newspapers, *the Pickerington Times* and *This Week Pickerington* and several websites providing information on local needs and interests (Factor 2). The residents perceive the community as a separate entity from Columbus. It has a long distinct history and it is the "Violet Capital of Ohio." Its strong Chamber of Commerce has worked hard to promote its distinguishing features (Factor 3). Pickerington has its own local government and elected officials, including a mayor and seven-member town council, and it is run by a city manager (Factor 4). The community has its own zip code and telephone book (Factor 5). Pickerington has numerous commercial establishments and other facilities, including health clinics, but there is no information on the transportation systems (Factor 6). The newspapers and websites provide opportunities for direct advertising to community residents (Factor 7). Pickerington provides most of its own municipal services, such as police, fire protection, schools, libraries, water, sewer service and street maintenance (Factor 8).

7. Channel 278A can be reallocated at Pickerington at a site 8.8 kilometers (5.4 miles) northeast of the community.¹⁴ Since Pickerington is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian Government has been received for this allotment.

8. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office Pursuant to the Congressional Review Act, *see* 5 U.S.C. §801(a)(1)(A).

9. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED That effective April 3, 2006, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel</u>
Lancaster, Ohio	238B
Pickerington, Ohio	278A

10. IT IS FURTHER ORDERED, That the NABC's request for waiver IS DENIED and its application File No. BPH-20040108ALM IS DISMISSED.¹⁵

11. IT IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

(...continued from previous page)

community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether community's leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own zip code or telephone book provided by the local telephone company; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries. *See Tuck*, 3 FCC Rcd at 5378 (1988).

¹⁴ Channel 278A can be allotted at Pickerington at coordinates 39-56-39 NL and 82-41-14 WL.

¹⁵ All pleadings filed in connection with this application are also dismissed.

12. For further information concerning this proceeding, contact Victoria M. McCauley (202)
418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau